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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/089,871	06/04/1998	RUDOLF CAROLUS MARIA BARENDSE	97253-A	3289
25225	7590	10/23/2006		
MORRISON & FOERSTER LLP 12531 HIGH BLUFF DRIVE SUITE 100 SAN DIEGO, CA 92130-2040			EXAMINER RAMIREZ, DELIA M	
			ART UNIT 1652	PAPER NUMBER

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Advisory Action
Before the Filing of an Appeal Brief

Application No.

09/089,871

Applicant(s)

BARENDSE ET AL.

Examiner

Delia M. Ramirez

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 September 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: NONE.
Claim(s) objected to: _____.
Claim(s) rejected: 18,19,21-24,26-28,31-35,41-48 and 50-52.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

ADVISORY ACTION

1. Claims 18-19, 21-24, 26-28, 31-35, 41-48, 50-52 are pending.
2. The request for entering amendments to claims 18-19 and cancellation of claims 25 and 49, as well as arguments filed on 9/21/2006 under 37 CFR 1.116 in reply to the Final action mailed on 5/18/2006 and the Advisory action mailed on 8/15/2006 are acknowledged. The proposed amendments to the claims will be entered. As indicated by Applicant, claims 18-19 now include limitations found in previous claims 25 and 49. While amendments to claims 18-19 seem to overcome the 35 USC 112, first paragraph rejection due to the presence of new matter, the amendments to the claims are not sufficient to overcome the obviousness rejections previously applied. It is noted that the limitation regarding starch in the carrier now recited in claims 18 and 19 was previously addressed with regard to claims 25 and 49, which were rejected as obvious over Nielsen et al. in view of Ghani. See Final action mailed on 5/18/2006.
3. Applicant argues that Ghani does not disclose starch containing, non-fibrous carriers. Thus, it would not be obvious for a skilled artisan to use a non-fibrous solid carrier comprising starch to facilitate extrusion of the dough. Applicant also argues that the Office must show that a skilled artisan would be motivated to make a granulate using a non-fibrous carrier and that it is not sufficient for the Office to merely state that "there is no reason to believe that a granulate lacking fibrous materials cannot be made by extrusion".
4. Applicant's arguments have been fully considered but are not deemed persuasive. As indicated in the Non Final action mailed on 2/24/2003 and reiterated in the Final action mailed on 5/18/2006, Ghani (U.S. Patent No. 6120811) teaches an enzyme granulate wherein the solid carrier is a starch-containing compound – soy flour, soy grits, corn flour, etc. – (column 2, lines 25-34). One of Ghani's examples provides a carrier that is 90% (w/w) soy flour. In addition, Ghani teaches granulates which comprise hydrolyzed starches and gums (column 2, lines 35-52). Therefore, the granulates of Ghani would

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comprise starch. With regard to arguments that the Office merely stated that “there is no reason to believe that a granulate lacking fibrous materials cannot be made by extrusion” as motivation to use a non-fibrous carrier, it is noted that this statement was made when discussing the expectation of success at making a granulate lacking fibrous materials. This was not a statement with regard to motivation as asserted by Applicant. Furthermore, contrary to Applicant’s assertion, the Office has provided a clear motivation as to why a granulate lacking fibrous materials would be desirable. As indicated in the Final action mailed on 5/18/2006, page 5, one of skill in the art would be motivated to use non-fibrous materials in the granulate (1) to avoid mechanical malfunctions in the extruder, and (2) to produce smaller granules as the presence of fibrous materials may interfere with obtaining granules which are smaller than the average size of the fibrous material. Also, as indicated previously, Ghani teaches the use of carriers having 90% soy flour and 10% corn syrup. Thus, one of skill in the art would be motivated to use starch-containing carriers, such as those of Ghani, to further increase the nutritional value of the granulate.

5. For purposes of Appeal, the status of the claims is as follows:

Claim(s) allowed: NONE

Claims(s) objected to: NONE

Claim(s) rejected: 18-19, 21-24, 26-28, 31-35, 41-48, 50-52

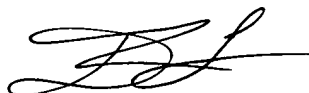
Claim(s) withdrawn from consideration: NONE

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Delia M. Ramirez whose telephone number is (571) 272-0938. The examiner can normally be reached on Monday-Friday from 8:30 AM to 5:00 PM.

8. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Ponnathapura Achutamurthy can be reached on (571) 272-0928. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600.



Delia M. Ramirez, Ph.D.
Patent Examiner
Art Unit 1652

DR
October 17, 2006